
Judiciary Committee

HB 2164

Title: An act relating to liability arising from acts or omissions of department of social and health services' workers.

Brief Description: Regarding liability arising from acts or omissions of department of social and health services' workers.

Sponsors: Representatives Kagi and Dickerson.

Brief Summary of Bill

- Specifies that neither the state nor its employees are liable for a poor outcome in the delivery of social and health services if the outcome is the result of choosing a course of action from among alternative courses and reasonable care and skill were used in making the choice.

Hearing Date: 3/1/05

Staff: Bill Perry (786-7123).

Background:

Tort Law and the Negligence Standard. The tort law allows a plaintiff to seek recovery of monetary damages for injury or harm done by another to the plaintiff or the plaintiff's property. Tort law originated in the common law and has evolved over several centuries. In recent times, much of the tort law has been in statute.

Many tort actions involve a claim that the defendant acted negligently. Negligence means acting without the ordinary care that a reasonably prudent person would have exercised under the same or similar circumstances. A tort action based on negligence consists of the following elements which the plaintiff must show: (1) the defendant owed the plaintiff a duty; (2) the defendant breached that duty; (3) the breach caused injury or harm to the plaintiff; and (4) the injury or harm caused monetary damages to the plaintiff.

Governmental Liability. At common law everyone is generally required to use reasonable care when his or her actions create a foreseeable risk of harm to others. At common law and under the state Constitution government may generally remain immune from tort law based on negligence. The Legislature, however, has waived this governmental immunity and provided that generally government is liable for its tortious conduct "to the same extent as if it were a private person or corporation."

Despite this general legislative policy of holding government liable to the same extent as private persons, the Legislature and the courts have both imposed limitations on government liability. Many of these limitations have been created in recognition that some government functions, at least, are unlike anything a private person or corporation does or could do. The Legislature, for instance, has statutorily provided some measure of civil immunity for specific acts ranging from the acts of police dog handlers to the discretionary acts of elected and appointed government officials. The courts have also provided for governmental immunity in cases where the government is engaged in a governmental function not provided by the private sector, under what is called the "public duty doctrine." Governmental functions are those that are for the benefit of the public generally and include regulatory programs, police and fire protection, correctional programs, and social welfare programs. The courts have also created several exceptions to the public duty doctrine. Under current statutes and common law doctrines, government has been held responsible for its negligent acts in some situations involving harm done by or to persons who are under government supervision or who are receiving government assistance or protection.

The "Exercise of Judgment" Jury Instruction. In medical malpractice cases, juries are sometimes instructed that a doctor is not liable for choosing one of two or more alternative courses of treatment or diagnosis, if the doctor used reasonable care in making the choice. An example of such a jury instruction is found in the Washington Pattern Jury Instructions (WPI). (See WPI 105.08.) The WPI are the product of a committee appointed by the Washington Supreme Court. However, the instructions are not adopted or reviewed by the Court before publication. Instead, the Court considers the instructions as they are brought before the Court on appeal.

The appellate courts have upheld the "exercise of judgment" instruction in various cases, but have sometimes expressed the need for caution in its use. For instance, the instruction is to be used as a supplement to the general standard of care instruction used in a medical negligence case *i.e.*, a doctor has a duty to exercise the degree of skill, care, and learning expected of a reasonably prudent doctor in this state acting in the same or similar circumstances. (See WPI 105.01.) The instruction was formerly referred to as the "error of judgment" instruction, but the drafters of the WPI changed the designation to "exercise of judgment" in part in response to criticism that the instruction may mislead juries. The drafters expressed concern that stating that a doctor is not liable for bad results caused by an "error" may lead a jury to believe that some types of negligence do not produce liability. On the other hand, the drafters of the instruction have also noted that the rule can sometimes be helpful in reminding jurors that medicine is not an exact science with guaranteed results and that professional medical judgment may reasonably differ. (See WPI 105.08 Comment.)

Summary of Bill:

Neither the state nor its employees are liable for a poor outcome in the delivery of social and health services if the outcome is the result of choosing one of two or more alternative courses of action and reasonable care and skill were used in making the choice.

Legislative findings are made regarding the importance and difficulty of providing programs to deal with problems such as child and elderly abuse and criminal offenders. The Legislature also finds that while state employees are expected to provide these programs nonnegligently, citizens of the state should not be liable when public employees exercise reasonable care.

The application of other statutes specifying a liability standard for the state's employees and agents is not limited.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.